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Attorneys for Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OLGA ORTMANN, as an individual and on behalf of all others similarly situated.

Plaintiff,

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NEW YORK LIFE INSURANCE COMPANY, a corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, a corporation; and DOES 1 through 20, inclusive.

Defendants.

| Case No. 3:07-CV-02506-WHA

**DEFENDANTS NEW YORK LIFE
INSURANCE COMPANY AND NEW
YORK LIFE INSURANCE AND
ANNUTY CORPORATION'S
NOTICE OF MOTION AND
MOTION TO DISMISS THE
EIGHTH, NINTH, TENTH AND
ELEVENTH CAUSES OF ACTION
IN PLAINTIFF'S COMPLAINT**

[FED. R. CIV. PROC. 12(b)(6)]

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on July 5, 2007, at 8:00 a.m., or as soon thereafter as this matter may be heard by the Court, Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation (“Defendants”) will and hereby do move to dismiss, the eighth, ninth, tenth, and eleventh causes of action in Plaintiff’s complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This motion is based upon this notice, the accompanying memorandum of points and authorities, the proposed order, all pleadings and papers on file in this action, and such other matters as may be presented to the Court at the time of the hearing.

Dated: May 24, 2007

MORGAN, LEWIS & BOCKIUS LLP
JOHN S. BATTENFELD
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By /s/ JILL A. PORCARO

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